IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3927 of 2001

WITH

CIVIL APPLICATION Nos.6678/01, 11803/01 and
2470 of 2002.

For Approval and Signature:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE J.N.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRANJIVAN HARJIVAN PARMAR

Versus

STATE OF GUJARAT

Appearance:

Mr.P.H.Parmar, PARTY-IN-PERSON for Petitioner
MR SN SHELAT, ADVOCATE GENERAL, with
Mr.A.Y.Kogje, and Ms.Shruti D. Trivedi
and Mr. R.M.Chhaya for Respondent Nos.1 & 2
MR DN PATEL for Respondent No. 3.

[CAV JUDGMENT]

CORAM : HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE J.N.BHATT

Date of decision:15/10/2003

(Per : HON'BLE MR.JUSTICE J.N.BHATT)

PREAMBULATORY PROFILE:

The challenge in this Public Interest Litigation is referable to judicial scrutiny, determination and adjuidication of the Constitutionality of the exercise of Legislative Jurisdiction in enacting a statute for regularisation of unauthorised developments in urban develoment areas or development in other parts of the State and known as "The Gujarat Regularisation of Unauthorised Development Act, 2001" ("Impugned Act") in the backdrop of two celebrated jurisprudential doctrines, viz. (i) Judicial Review, and (ii) Ultra Vires Concept, which manifestly and evidently bring into sharp focus in microscopic evaluation a promising and panoramic profile of the issue :-

"Political Review of Judicial pronouncements by Legislative power or Judicial Review of Legislative Jurisdiction and competence of two out of three Chief Organs of the State, viz. Legislature and the Judiciary."

The petitioner claims to be a social worker and holding the office of President of Akhil Bhartiya Vishwakarma Parivar and Managing Trustee of Vishwakarma Vidyapith. He is a retired Architectural practitioner since 1967, and, also, claims to have rich and vide experience for period of more than two decades in facing and handling, allegedly, successfully, multi-dimensional Civil and Criminal litigations initiated allegedly by and against very influential and elite persons and through well-known Advocates.

The petitioner has also placed reliance on some documents and photographs and literatures pertaining to institution known as Akhil Bhartiya Vishwakarma Parivar. The petitioner claims to be the President of Akhil Bhartiya Vishwakarma Parivar, to which reference may be made hereinafter, if and when required in course of discussion of the merits of the petition and which may be material and relevant for the purpose.

SHORT PETITIONING PROFILE AT THE OUTSET:

The gist and genesis of this petition, according to the claim of the petitioner is the 'ultra-vires' action in enacting the Impugned Act which was immediately preceded by "The Gujarat Regularisation of Unauthorised Development Ordinance, 2001". It is, also, the plea of the petitioner that it is in the National and Public interest to declare the Impugned Act, as ultra vires, the Constitution, as it suffers from the vice of inequality, inequity, illegality and impropriety.

The main theme of the petition, as claimed by the petitioner, is the ultra-vires legislative action in enacting the Impugned Act. It is assailed by the petitioner contending that the Impugned Act is against the provisions of the Constitutional rights including fundamental rights. The challenge is, also, made against the Impugned Act on the ground that it is against the principles of equality of law, equality before law and the provisions of relevant law, rules and regulations and bye-laws of building and Town Planning Schemes. Further allegation is that the Impugned Act has encouraged disorderly development of cities destroying the rights of natural air and light, affecting environmental problems like pollution and encouraging corrupt practice. It is, therefore, the case of the petitioner that the Impugned Act Act is against the National and Public interest and is liable to be nullified by declaring it, as ultra-vires, the Constitution of India.

DEFENSIVE ARMOURY OF THE STATE

Respondent No.1, State has filed by its counter, one at the stage of opposing admission of the petition and second after the petition came to be admitted. Other respondents appear to have followed it. The State has, inter alia, raised the following points and aspects in defending and supporting the Impugned Act :-

(1) That the purpose of challenging the Constitutional validity of the Gujarat Regularisation of Unauthorised Development Act, 2001, can, succeed only in the backdrop of the facts of the case and the conspectus of the realist circumstantial profile which is, conspicuously, absent in the petition. Since Constitutional challenge is made against the Impugned Act, in vacuum, the petition deserves the legal fate of dismissal, only, on this ground alone.

(2) That it is denied that the Impugned Act is against the provisions of the Constitution and the fundamental rights and the provisions of relevant laws, rules, regulations and building bye-laws and aims and objects of town planning laws, development laws and town planning schemes.

(3) That, it is incorrect that the Impugned Act has encouraged disorderly development affecting Public health and environment, creating pollution and encouraging corruption.

(4) It is controverted that the Impugned Act shall establish a bad precedent and encourage irregularity in construction.

(5) That the contentions advanced in the petition are quite vague and rest in vacuum and in abstract terms without specific instances and clear facts.

(6) It is denied that there will be possibility of abuse of the Impugned Act and it violates the provisions of the law.

(7) That the Impugned Act does not violate the provisions of the Constitution, as well as, any other provisions of any Law.

(8) It is denied that it is against the principles of natural justice, real justice and fundamental rights.

(9) It is questioned and controverted that the Impugned Act has given unrestricted powers in the hands of the concerned authorities.

(10) That the petitioner appears to have filed the petition in pursuit of publicity and the letter addressed to the Court appears to be more of an exercise in self-aggrandizement.

(11) It is contended that the respondent No.1 State has not misused the powers granted to it under the Constitution of India as alleged.

(12) It is denied that the Impugned Act is, also, against the prevailing building by-laws, town planning Act, Rules throwing them from progressive to destructive ways and manners and opening doors for corrupt practice as alleged. It is, also, pleaded that in the entire petition,

the petitioner has made averments stating that the Impugned Act is against the prevailing laws and against the provisions of the Constitution of India without indicating as to why and as to which provisions are against the existing provisions of the law and the Constitution of India. Nothing has been even remotely indicated as to how the provisions of the Constitution of India have been violated by enacting the Impugned Act Act.

(13) It is contended that the averments made in the petition with regard to the petitioner being a successful architect is unsupported and it is further contended that the petitioner appears to have retired way back in 1967 and therefore, he certainly does not appear to be an expert in the field of modern architecture and environments.

(14) The averments made in the petition with regard to having faced various civil and criminal litigations are vague. In that, the petitioner has not pointed out the nature of litigation.

(15) The other allegations made and the pleas raised in the petition are, also, denied.

(16) While supporting the vires of the Impugned Act, it is the contention of the respondent No.1 State that the object of the Impugned Act is quite evident and the intervention of the Government by legislation for regularisation had become a compelling necessity in view of the facts articulated in the statement of objects and reasons after consideration of the Study-Group Report. The Impugned Act and its provisions are just, valid and proper. The enactment of the Impugned Act was necessitated on account of prevailing compelling reasons and the circumstances for the Government and it does not in any way contravene or violate the provisions of the existing laws and the Constitution.

(17) It is also pleaded that similar provisions in "The Tamil Nadu Town and Country Planning Act, 1971" were subject matter of challenge before the Hon'ble Apex Court in the case of Consumer Action Group v. State of Tamil Nadu, (2000) 7 SCC 425, and the Hon'ble Apex Court has upheld the validity and legality of similar provisions and therefore the challenge at the instance of the

petitioner in the name of Public interest is not maintainable and deserves to be rejected.

DENOUNCING VOICE FROM REJOINDER

The petitioner has, also, filed rejoinder against the second affidavit in reply filed on behalf of the respondent No.1, State, inter-alia, raising following facts and aspects :-

(1) That the Impugned Act is illegal. That, now, survival of law and order situation remains only in the active duties of the Honourable judiciary as illegalityis encouraged.

(2) That the petitioner sticks to the facts and pleadings stated by him earlier and that whatever pleaded in the second affidavit in reply on behalf of the respondent No.1 is not admitted by him and that he reiterates that the Impugned Act is ultra vires the Constitution.

(3) That the provisions of the Impugned Act are contrary to the National and Public interest.

(4) That respondent No.1 State by enacting the Impugned Act has tried to inactivate the bold steps taken by this High Court against the unauthorised, illegal and unlawful developments and, therefore, it is illegal and against the bold and independent verdicts.

(5) That the Impugned Act is designed to favour a very limited interested and influential offenders and that it is at the cost of Public Interest.

(6) It is reiterated that the Impugned Act is ultra vires, the Constitutional provisions and the violates the fundamental rights of equality before law and equal applicability of law.

(7) It also offends the provisions of directive principles of State policy.

(8) That much water has flown after the pronouncements of judgments of Hon'ble Supreme Court in (1) "Consumer Action Group v. State of Tamil Nadu and (2) S.P. Anand v. H.D. Deve Gowda & ors.

(9) That the Impugned Act is applicable to

unauthorised development carried out before 20.11.2000, only, and therefore it offends the fundamental right of equality before law and equal applicability of law to all.

(10) It, also, infringes the directive principles of State policy and fundamental duties provided in the Constitution of India.

(11) That the Impugned Act is in contravention of the provisions of the relevant Principal Acts relating to developments which violates and nullifies the provisions thereof and therefore, it is ultra vires.

MARATHON ARGUMENTS IN COURSE OF HEARING:

The petitioner is heard in person 'in-extenso' for hours. Learned Advocate General has also offered his vehement submissions which are adopted by the learned advocates appearing for the respondent No.2 Corporation and respondent No.3, AUDA. We may, also, mention that on more than one occasion, we requested the petitioner either to engage the services of a lawyer or to opt for appointment of a competent senior lawyer in support of the challenge made in the petition, to which he readily and strongly countered and expressed his desire to make submissions, factual, as well as, legal, as party-in-person, contending that he is a very experienced person having appeared as party-in-person in number of civil and criminal litigations and he will be able to argue and make his points good, by raising all relevant aspects and legal points not only in Gujarati language but also in English. He has, therefore, argued in English. We place it on record that the petitioner, therefore, argued as party-in-person for hours together and most of time in English.

THE LEGISLATIVE FRAME, OBJECT, SCHEME OF POLICY OF THE IMPUGNED ACT:

The Impugned Act has come into force, on 22nd November 2000. The Impugned Act comprises of only 10 sections. The object of the Act is to regularise the unauthorised development in urban developments area or development area in the State. It received the assent of the Governor and came to be published by notification dated, 1st September 2001, repealing "the Gujarat Regularisation of Unauthorised Development Ordinance 2001", with a provision in section 10, that notwithstanding such repeal anything done or any action under the said Ordinance

shall, in so far as, it is not inconsistent with the provisions of the Act, be deemed to have been done or taken under the Impugned Act.

Section 9 empowers the State Government to make rules and regulate provisions for carrying out the purposes of the Impugned Act, with a proviso that if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with the previous publication of any Rule to be made under the Impugned Act. In exercise of power conferred by section 9 read with section 3 of the Impugned Act, the Government of Gujarat has made rules to regularise unauthorised developments. These Rules are called "The Gujarat Regulation of Unauthorised Development Rules, 2001" (Rules) which came to be notified by notification dated 4th September 2001, after inviting objections and suggestions from all persons likely to be affected thereby, within 30 days from the date of publication of draft notification in the official gazette.

The design and desideratum manifested in the Impugned Act and mechanism provided for carrying out the purposes are evident in the legislative scheme in the Impugned Act which need highlighting with a view to appreciate the merits of challenge to the Impugned Act. By virtue of section 1, sub-section (2), the Impugned Act was brought into operation, on 22nd November 2000, the day on which the Ordinance came to be published and the Impugned Act has repealed the said ordinance. The legislative frame of section 2 provides statutory definitions. Clause (a) to section 2(1) defines "area development authority" and clause (b) defines "Commissioner" as per the meaning assigned to it in clause (9) of section 2 of the Bombay Provincial Municipal Corporation Act, 1949 (the Bombay Act). Whereas, the expression "designated authority" is defined in clause (c) and in clause (d) "development" and in clause (e) "development area" have been defined and shall have the meaning assigned to them in section 2 of Gujarat Town Planning and Urban Development Act, 1976 (the Gujarat Act). Clause (f) is not relevant and as per clause (g), "relevant law" means the Bombay Act or the Gujarat Act or any rules or bye-laws, regulations, standing orders or orders made thereunder. Last clause (h) defines what is "urban development authority" and it shall have the meaning assigned to it in clause (xxvii) of section 21 of the Gujarat Act. Sub-section (2) of section 2 of the Impugned Act is very material which provides that the development shall be deemed to be unauthorised if no permission of authority competent to give such permission is obtained therefor, or having

obtained such permission, the development is in contravention of the relevant law or of such permission.

Section 3 of the Impugned Act provides for regularisation of unauthorised development. It appears to be the heart of the Impugned Act. It will be, therefore, expedient to reproduce with profit the same. Section 3 reads as under:

"3.(1)(a) A notice issued to a person under the relevant law at any time before the 22nd November, 2000 requiring such person to remove or pull down or alter unauthorised development carried out, owned or occupied by him; or

(b) any order issued or decision taken under the relevant law at any time before the 28th April, 2001, the date on which the Gujarat Regularisation of Unauthorised Development Ordinance, 2001 was first published, directing removal or pulling down or alteration of unauthorised development carried out, owned or occupied by a person,

shall --

(i) in the case of (a) be deemed to have stood suspended with effect on and from the 22nd November, and

(ii) in the case of (b) be deemed to have stood suspended with effect on and from the 28th April 2001.

unless and until such notice, order or decision stands revived under sub-section (5),

(2)(a) Notwithstanding anything contained in the relevant law or in the order issued or the decision taken under the relevant law, directing removal, pulling down or alteration of unauthorised development, where in the opinion of the designated authority --

(i) a person has, at any time before the 22nd November 2000 carried out any unauthorised development in urban development area or development area, and

(ii) such unauthorised development may, having regard to the provisions of section 4 be regulated.

the designated authority may, within such period and in such manner as may be prescribed, serve on the person a notice requiring him within such period not being less than a month as may be specified therein to comply with such requisitions made under section 4 and specified therein and to pay to the designated authority such fees per square metre of each category of unauthorised development as may subject to the provisos, be determined by the designated authority and specified therein;

Provided that the designated authority shall fix fees, subject to the maxima and the minima specified in the Table below:

Provided further that different rates of fees may be determined by the designated authority for different categories of unauthorised development in different areas and for different unauthorised uses.

(b) It shall be lawful for the designated authority to form the opinion referred to in clause (a) either on the basis of information available with it or an application made to it by a person who has carried out or who owns or occupies the unauthorised development.

(c) The designated authority, shall, as soon as may be, after service of notice to a person under clause (a), cause the substance thereof to be published for the information of the public, in such manner as may be prescribed.

TABLES OF FEES

Category of unauthorised Development	Maximum and minimum per square metre.
A. For uses other than commercial.	
1. Margin and set backs	Not more than Rs.1200 and not less than Rs.600
2. Floor Space Index	Not more than Rs.2000 and not less than Rs.700
3. Covered projection	Not more than Rs.1100 and not less than Rs.400

4. Change of use	Not more than Rs.1100 and not less than Rs.400	
5. Common plot and consolidated open plot	Not more than Rs.1100 and not less than Rs.400	
6. Height of building	Not more than Rs.1200 and not less than Rs.600	
B. For commercial use:		
(i) Two times of the fees specified for use mentioned in clause A for ground floor and first floor.		
(ii) One and half times of the fees specified for use mentioned in Clause A for floors other than those specified in item (i).		
C.In land measuring not exceeding one hundred square metres.	Fifty per cent of the fees specified for use mentioned in clause A or as the case may be clause B.	

Explanation: For the purpose of this table, where development of tenements or of flats or of both the tenements and flats has taken place on common land the area of which exceeds one hundred square meters, each owner or occupier of such tenements, flats or, as the case may be, both of tenements and flats, shall be deemed to have held such area of land as is derived by dividing the common land by the total number of Tenements, flats or as the case may be both the tenements and flats developed on such common land.

---

(3)(a) Subject to the provisions of clause (b) upon the compliance of requisitions made under section 4 and specified in the notice, to the satisfaction of the designated authority and on the payment of fees under sub-section (2), such development shall cease to be unauthorised and a certificate to that effect shall be issued to the person by the designated authority in such form

as may be prescribed.

(b)(i) The designated authority shall, before receiving the fees and issuing of the certificate under clause (a), consult a committee of experts consisting of three persons, who have knowledge of and experience in structural engineering, fire fighting and town planning respectively, constituted by the designated authority, on the question as to whether the person has, while complying the requisitions complied with the fire safety measures and structural stability requirements as per the National Building Code and the Indian Standard Specifications for the time being in force and it shall be the duty of the committee to advise the designated authority on the question so referred.

(ii) The Committee shall follow such procedure for disposal of its business as may be determined by the designated authority.

(4) An amount deposited by a person with the municipal corporation of a city, the area development authority or, as the case may be, the urban area development authority against unauthorised development shall be set off against the fees to be paid by him under sub-section (2).

(5) Where no notice is served upon a person under sub-section (2) within the period prescribed under that sub-section or where a notice is served upon a person under sub-section (2) but a certificate is not obtained by him under sub-section (3) within such period as may be prescribed, the notice, order or, as the case may be, decision referred to in sub-section (1) shall stand revived."

It is very clear from section 4 of the Act that it prescribes and provides the circumstances in which the unauthorized development may or may not be regularized. Clause (a) of sub-section (3) of section 4 of the Impugned Act clearly provides that the designated authority may regularise any unauthorised development in respect of the following matters only:

(i) Margins and setbacks,
(ii) Floor space index,
(iii) Covered projection,
(iv) Change of use,

(v) A common plot and consolidated open plot,
(iv) Height of a building.

Clause (b) of section 4(3) provides further that the designated authority may regularise any unauthorised development inso far as parking and sanitary facilities are concerned subject to the conditions provided in sub-clause (i) and (ii).

In sub-section (1) of section 5 appellate forum is created and provided for. Any person aggrieved by the notice within a period of 60 days from the date of receipt or publication of the notice may prefer an appeal to an Appellate Officer who shall be a person who has held the office of District Judge for a period not less than three years and appointed in this behalf by the State Government for each city or development area. With the usual and general provisions that the Appellate Officer may entertain the appeal after the expiry of the period of 60 days upon being satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. It is interesting to mention that the Appellate Officer is entitled to monthly salary and allowances that may be determined by the State Government in consultation with the Corporation of the City or as the case may be authority of the development area for which he is appointed, out of the Municipal Funds of the Municipal Corporation of the City or the funds of the Area Development or the Urban Development Authority.

The constitution of infrastructure development fund is prescribed and provided in section 6, whereby, it is statutorily mandated that the fees received under the Impugned Act shall be credited to a fund which shall be called the Infrastructure Development Fund and which shall be held by the designated authority in trust for the purpose of augmentation, improvement or creation of an infrastructure facility. Section 7 provides for protection of action taken under the Impugned Act whereas, in section 8 it is clarified that regularisation of unauthorised development under the Impugned Act shall be without prejudice to any civil or the criminal liability to which person may be subject to under any law. As observed hereinbefore, section 9 empowers the State Government to make rules, whereas, last section 10 provides repeal and savings. The statutory profile and legislative regulatory mechanism to advance the aims and objects of the Impugned Act to regularise the unauthorised development in urban development or development area in the State is heralded and highlighted for proper and better understanding the challenge against

the legislative action in enacting the Impugned Act by the State of Gujarat.

DESIGN AND MECHANISM OF STATUTORY RULES:

Respondent No.1, State of Gujarat, in exercise of powers conferred by section 9 read with section 3 of the Impugned Act has framed and made Rules called "The Gujarat Regularization of Unauthorised Development Rules, 2001" (Rules), to regularise the unauthorised developments and to advance the object and purpose of the Impugned Act. Rule 2 provides definitions of some of the words with further provision that words and expressions used but not defined in the Rules shall have same meaning assigned to them in the Impugned Act.

Rule 3 provides for notice for regularisation of unauthorised development in a prescribed Form 'A' within a period of six months from the date of commencement of the Rules for the purpose of regularisation of unauthorised development to comply with the requisition provided in section 4 and specified in the notice within a period of sixty days with a discretion upon written reasons to extend such time limit for a further period of six months by the designated authority to whom the notice is required to be addressed.

Rule 3 further provides that within thirty days from the issuance of such notice, the designated authority is required to affix the notice at the prominent places where such unauthorised development is situated with a view to invite objections and suggestions thereon and thereafter, the designated authority is required to pass appropriate order within ninety days and to pass order for collection of the requisite fees for regularisation which can be recovered upon discretion of the designated authority in monthly installments not exceeding 12 in number. The payment of fees is required to be calculated and regulated by prescribed procedure by the designated authority against the unauthorised development.

For the purpose of regularisation of unauthorised development in parking space and sanitary facilities, the designated authority is obliged to serve a notice in Form "B", to the persons whose cases fall under the provisions of clause (b) of sub-section (3) of section 4 with an authority to comply with the directions within a period of six months as provided in Rule 4. In the event of the designated authority having an opinion that it is not feasible to provide for necessary parking facility in unauthorised development, he is empowered to direct the

person to provide such facility at such suitable location as deemed fit in accordance with the provisions of clause (6) of sub-section (3) of section 4, following the procedure prescribed in Rule 3 for regularisation of unauthorised development.

As provided in Rule 5, a person desirous of regularisation of unauthorised development has to make an application to the designated authority in Form "C" along with Form 'D" and the designated authority is required to consider and follow the procedure as prescribed in Rule 3 and 4. In Rule 6, fixity of rates of fees for regularisation has been made and the designated authority is powered to specify the rate of fees to be paid by a person making an application to different categories of unauthorised developments in different areas and for different unauthorised use in accordance with the provisions of sub-section (2) of section 3.

The designated authority is required to publish the rates so fixed in widely circulated newspaper in the area and display the map showing different areas for which different rates for different categories are prescribed, at the notice board of the office of the designated authority along with the schedule of rates prescribed. After following the procedure and considering the facts of a given case, the Designated Authority, upon being satisfied that the requirements under the Rules are complied with by the person making an application for the regularisation of unauthorised development, along with payment of fees, as laid down in Rule 6, has authority to issue a certificate in Form "E" under his signature and seal of the office for regularisation of unauthorised development. Forms "A" to "E" are, also, prescribed at the end of the Rules.

AMENDMENTS MADE IN THE IMPUGNED ACT:
State of Gujarat has made certain amendments in the Act and the Rules. Following amendments are made in sections 3 and 5 and 9 of the Impugned Act pursuant to the Gujarat Regularisation of Unauthorised Development (Amendment) Act, 2002, which received assent of the Governor on 6th April 2002.

"3(2)(aa) Where an unauthorised development in urban development area or development area has been carried out at any time before the 22nd November 2000 and the development has been wholly destroyed by the earthquake or rendered substantially and permanently unfit for the purpose of occupation due to the earthquake in

the Gujarat on 26th January, 2001 and the owner or occupier of such development intends to carry out development, at the same place and with the same built up area as existed prior to such destruction, the designated authority may, notwithstanding, anything contained in the relevant law, but having regard to the provisions of section 4, by an order allow him to carry out such unauthorised development subject to such terms and conditions as may be prescribed and may regularise the same in accordance with the provisions of this Act, as if such unauthorised development had been carried out before the 22nd November, 2000:

Provided that the designated authority, while regularising such unauthorised development shall not charge any fees prescribed in the Table."

xxxx

xxxx

In section 5

(1) for sub-section (1), following shall be substituted, namely: -

"(1)(i) Any person aggrieved by the notice served upon him or notice published under sub-section (2) of section 3 may, within sixty days from the date of the receipt, as the case may be, the publication of the notice, or

[ii] the owner or occupier aggrieved by an order made under clause [aa] of sub section [2] of section 3 may within sixty days from the date of the order,

prefer an appeal to an Appellate Officer, who shall be a person who has held the office of District Judge for a period not less than three years and appointed in this behalf by the State Government for each City or development area;

Provided that the Appellate Officer may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time ;

[2] in sub section [2], after the words " the notice ", the words, letters brackets and figures

" or as the case may be, the order made under clause [aa] of sub section [2] of section 3" shall be inserted.

xxxxxx

4. [cc] the terms and conditions subject to which unauthorized development may be allowed to carry out and regularized under clause [aa] of sub section [2] of section 3.

5.[1] The Gujarat Regularization of Unauthorized Development [Amendment] [Second] Ordinance, 2001 is hereby repealed.

[2] Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act."

AMENDMENT MADE IN THE RULES:

The respondent No.1, State of Gujarat has also made further amendments in sections 3 and 4 by virtue of the Gujarat Regularisation of Unauthorised Development (Amendment) Act, 2003 which received assent of the Governor on 29th March, 2003 and published on 31st March, 2003, with respect to Table of fees and making of an application. Section 3A in the Impugned Act in relation to application of sections 3 and 4 in certain circumstances came to be made. Likewise, in section 4, in sub-section (3), in clause (b), to sub-clause (i) after the existing proviso in the Impugned Act, following proviso was added:

"Provided further that in case where it is not feasible to provide the parking facilities as mentioned above, the designated authorities may charge parking creating fee, as may be decided by the designated authority and facilitate in providing the required facilities or may provide for the same on the basis of build, own, operate and transfer on behalf of the defaulters."

In the same amendment Act, further amendment is made in section 9 of the Impugned Act by inserting following provisions as section 9(2)(aa) after section 9(2)(a) :

"(aa) the rates of fees under sub-section (2) of section 3."

CONSTITUTIONALITY OF IMPUGNED ACT:

Since in this petition, challenge is against the Constitutionality of the Impugned Act, let there be a few relevant contours of the Constitutional law. A law to be valid must conform to the Constitutional parameters and norms. Unconstitutionality of a statute arises from various Constitutional transgressions and violations, viz. (i) violation of the scheme of distribution of powers between Centre and States, (ii) infraction, abridgement or infringement of fundamental rights, (iii) breach of other Constitutional limitations and restrictions. The judiciary is one of the principal organs of the State under the Constitution. In a Republic Parliamentary Secular Democratic system, the Executive, Legislature and the Judiciary are the Chief organs of the State from which expectations of social improvement and socio-economic justice are supposed to be non-delusion.

Notwithstanding that, history provides eloquent testimony from the Constitutional and legal administrative experience that organisation or the governance in the form of Government based on law, legislature and judiciary is always a guarantee against misuse and abuse of privileges, conflict of interest and confrontations of powers. When the base is Public policy and decisions are narrowed down or motivated for extraneous consideration, there is no better system of protection and the excellence and efficiency of an independent, strong and impartial judicial system; for nothing more nearly touches the welfare and security of an average citizen than a feeling that he or she can rely on judiciary and seek justice freely and fearlessly.

It is, rightly, said that the ignoble passions are sometimes in full blast and gross short-sightedness of policy of political operators crystallize in distortion, and distortions resulting in a quarrel with the sacrosanct Constitution, the Supreme Law of the land, the legislature losing its former lustre and its significant role, confrontation between the rival interests trying to circumvent even the legal course. It is in this context, the role of Judiciary in a Parliamentary, democratic secular, socialist, Welfare State like ours, assumes higher significance and wider ramifications.

The Constitution of India represents the Supreme Law of the land. All three branches or organs of the National Administration are required to function within the ear-marked and defined Constitutional parameters. The

Legislature is the maker and creator of law. The Executive is the executor or implementor of the law and the Judiciary is the interpreter and exponent of law. The division of powers between the Legislature, Executive and Judiciary is one of the important features of our Constitution. The Constitutional mechanism with respect to three main organs of the State is, thus, very well articulated in Constitution, wherein, the Legislature must make laws, the Executive must enforce them and the Judiciary has to interpret the laws. Thus, three branches of National governance have to perform their respective roles within the Constitutional limitations and empowerments. In the event of any overstepping by the Legislature or the Executive in the Constitutional jurisdiction or breach of law, upon a challenge, before the judiciary or in other words in a Court of Law, is required to be judged and tested in exercise of powers of Judicial Review on the anvil of doctrine of ultra vires.

CONTOURS AND CANONS OF JUDICIAL REVIEW:

Judicial Review in the realm of Public law is the heart and hub of the judicial mechanism in our Constitution. The main grounds of Judicial Review are illegality, irrationality and procedural impropriety. While it has been stated that the grounds of Judicial Review define precise definition most, if not all, are concerned with either the process by which the decision was made or the scope of the power of decision maker. It is important to remember that initial source of power for Judicial Review was common law and that the overall ground of Judicial Review review is that the repository of Public power has breached the limits placed upon grant of that power.

The doctrine of ultra vires is invoked in this petition raising challenge against the legislative action in enacting the Impugned Act enacted by the State of Gujarat. Ultra vires is a Latin phrase, which means, beyond power; transcending authority and is frequently employed in relation to Acts or enactments of the authority or Legislature in excess of their Constitutional or Statutory rights or jurisdictional sweep. Thus ultra vires means an act performed without any legal authority to act and action beyond the scope of the powers of the decision making authority and beyond the scope of legal sanction.

Interpretative function of the Constitution is performed by the Courts through direct as well as indirect judicial review. In direct judicial review, the Court declares an enactment or an executive impugned action annulled or

declares void on the ground that it is incompatible and inconsistent with the Constitution, whereas, in indirect judicial review, while examining and determining the Constitutionality of an enactment, the court so interprets the statutory language as to steer clear of the alleged element of unconstitutionality. The provisions of Articles 32 and 226 are the Constitutional writ remedies in our Constitution for judicial review. The doctrine of judicial review is an important facet and element in the conscience of the judiciary.

Britain has no written Constitution. Therefore, there is no direct judicial review. Notwithstanding that judicial review is inherent in the mechanism of judicial adjudication. Therefore, Courts in Britain do resort to indirect judicial review at times, with a view to protect the civil rights and liberties while examining the Constitutional provisions restrictively. Obviously, therefore, even the delegated legislation cannot be excluded from the purview of judicial review. At times, Courts do resort to Wednesbury reasonableness. Judicial review is a potent instrument in the hands of judges, but the Judges must observe the limit set by the Parliamentary system upon exercise of this beneficent power, more so while exercising prerogative, plenary power of jurisdiction. In English system, under the Public law, the Courts evaluate the problems associated with the viers and illegality. In Britain on the question of judicial review, the House of Lords has manifestly expounded exclusivity principle in exercise of judicial review in a very well known and celebrated case of "O'reilly v. MaCman" (1983). The Courts play greater deference to other Constitutional organs jurisdictional sweeps particularly in exercise of Public power.

No doubt, it is essential nature of UK Constitution has not changed dramatically though at least in the sense that it has not become codified. Though there is no written statute providing structure or operation of the main institution, nor are most important statute entrenched in any way. The principal reason for this flexibility or vulnerability is that British Legal system is dominated by the doctrine of parliamentary sovereignty. UK Parliament enjoys absolute legislative supremacy. Whereas, in countries wherein there are written Constitution, supremacy of the Constitution is upheld. We are one of the countries wherein the doctrine of Constitutional supremacy and sovereignty is enjoyed.

"Anisminic" (1969) effectively abolished the distinction between jurisdictional error and non-jurisdictional error

of law; it was held that all error of law committed by a body exercising Public powers were jurisdictional errors and hence judicially reviewable as no authority or body has jurisdiction to be legally wrong.

The doctrine of supremacy of the Constitution and the judicial review has been, succinctly, explained and expounded in many decisions. It is, rightly, said that it is necessary to assert in clearest terms, particularly in the context of recent history that the Constitution is Supreme Lex and permanent Law of the land and there is no department or branch of the Government above or beyond it. Every organ of the State be it, Executive or Legislature or Judiciary, derives its authority from the Constitution that it must act within the limits of its authority. No one however, highly placed and no authority howsoever lofty can claim that it shall be the sole judge of its power under the Constitution or whether its action is within the confines of such power enshrined in the Constitution.

The Court is the ultimate interpreter of the Constitution and the final arbiter. At times, therefore, Courts in our country are, wrongly, accused of usurping the functions of the Constitutional adjudication. It is a function which has been imposed on them by the Constitution itself. Undoubtedly it is complex, delicate and difficult task and courts may, even, find embarrassing at times to discharge it. But the Courts cannot shrug their Constitutional accountability. Judicial creativity of Apex Court and High Courts in India is very well known and Courts have adopted positive approach in interpreting the Constitutional provisions. As long as fundamental rights exist and are part of our Constitution, power of judicial review has also to be exercised with a view to see that guaranteed rights are not contravened.

ROLE AND PHILOSOPHY OF JUDICIAL REVIEW :

Initially, in common law, categorization of the grounds for Judicial Review and the nature of any remedy available from the Courts depended upon the characterisation of the power exercised by the body under review. If the repository of the power under review which is supposed to act judicially and legally when exercising its power, there were separate grounds for review and remedies. The concept and philosophy of Judicial Review is widening. It can be used against the judicial error and error of law within the jurisdiction and such exercise is reviewable as not competent or authority.

The doctrine of jurisdictional error contemplates existence of error of law within the power, whereas, the doctrine of ultra vires permits no error of law within the power. Sometimes, the term simple ultra vires is used to describe action which is beyond the extent of what has been authorised and extended ultra vires is used to describe actions of the authorities within the power granted, but otherwise unlawful. At times, the problem of ultra vires is tested upon Judicial Review even with the help of Wednesbury's reasonableness.

Judicial Review is a great weapon in the armoury of administration of justice. The doctrine of Judicial Review review is an integral part of judicial and Constitutional process and mechanism. Judicial Review has two important functions, (i) Testing or Review of legitimizing Governmental and Legislative actions (ii) to protect the Constitution against any undue encroachments by the Government. Both these functions are inter-related. Justice Douglas characterizes Judicial Review as "tailoring an Act to make it Constitutional" and explains further that if construction of the Act possible that will save from being Constitutionally infirm, the Court will adopt that construction. This is a part of judicial strategy in deciding the Constitutional controversies.

When court is faced with several alternative interpretations of Constitutional provision, it would choose one of these, as in one sense, it performs a law making function, Judicial Legislation as branded. The primary function of the Court is to settle disputes and dispense justice. The court constitutes dispute resolving mechanism in many countries including India with written Constitution, there prevalence the doctrine of Judicial Review. It means that Constitution is the Supreme Law of the land and any law inconsistent therewith is ultra vires or void. The court of law has to perform the role of interpreting and expounding the provisions of the Constitution and exercise of power and declare any law or administrative action which may be inconsistent with the Constitution as unconstitutional.

Obviously, thus, judicial function stems from a feeling that a system based on a written Constitution can hardly be effective in practice without an authoritative, independent and impartial arbiter of Constitutional issues and, equally, true is the fact that it is necessary to restrain the governmental organs from exercising powers which may not be recognisable,

permissible or sanctioned by the Constitution. Judicial Review, thus, has a purpose and policy and meaningful, Historical past.

The task of interpreting the Constitution and the statutory provisions is a matter of highly creative judicial foundation. Needless to mention that democratic societies live and swear by certain values like, individual liberty, role of law, human dignity, Constitutionalism, human rights, fundamental rights and the culture of creativity, fraternity and fairness. It is the task of the judiciary to so interpret the Constitution and the law as to constantly promote, proliferate, project, inspire and inculcate these values and culture on which the entire Democratic set up of governance thrives. Courts, also, must keep in mind that the society does not standstill, it is dynamic and not static, social and economic conditions change continually. It is, therefore, required for the Courts to interpret the Constitution and the law that it does not fall behind the changing contemporary societal interests and requirements. Though the words of the Constitution remain the same, but their significance changes from time to time through creative and dynamic judicial interpretation.

PIVOTAL PRINCIPLES AND POLICY OF JUDICIAL SCRUTINY AND SALIENT SIGNIFICANT SYNDROMES OF CONSTITUTINALISM:

In so far as Judicial Review of legislative action, as in the present case is concerned, We deem it necessary to place on record, and herald the celebrated and well-known jurisprudential principles, propositions, and promising and pioneering perceptions new-classic Constitutionalism.

1. At first instance, there is a presumption in favour of the Constitutionality of the statute and initially the onus of proof of its unconstitutionality lies, on the person who challenges it.

2. Thus, where the validity of the law made by the competent Legislature is questioned in a Court of law that Court is bound to presume in favour of its legality, validity and Constitutionality and unless on the face of it, palpably, is spelt out wrong and illegal.

3 . Equally true, is that while considering the validity of a legislation, the Court will not consider itself circumscribed or restricted to

the pleadings of the State or the parties and would be free to satisfy itself whether under any provision of the Constitution or Law can be sustained or not.

4. The validity of the legislation is not to be judged merely by affidavits filed on behalf of the the parties but by all the relevant circumstances which the Court may ultimately find and more specifically by what may be gathered including from what the Legislature has itself said, its history and object, etc. and in the backdrop of factual and legal profile.

5. In order to sustain the presumption of Constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, history of times and may assume every set of facts which can be conceived existing at the time of legislation.

6. At times, the Courts have departed from the normal rule of presumption of Constitutionality when on the face of the impugned statute, there is no classification at all and no attempt made to select any individual with reference to any differentiating attribute peculiar to it and not possessed by others, the Courts may not let the State depend on the presumption in favour of the validity of enactment under Article 14 of the Constitution in a special and peculiar panorama and profile of the case and even, if need be, from pre-files.

7. The Courts usually adopt a liberal attitude towards socio-economic legislation. At times, it case of economic legislation, the Courts feel more inclined to judicial deference to legislative judgment than any other areas where fundamental human rights and larger Public interests are involved.

8. The Courts are also not concerned with the need or propriety of legislations. The function of the judiciary is not to project or canvass the legislative judgment or to hold the impugned judgment to be ill-advised or unjustified but the fact on which it is based. The main anxiety of the Court in determining the validity of the legislation should be, to see whether the law in question transgresses any Constitutional

restrictions or any statutory limitations imposed on the legislative jurisdiction and parameters.

9. The doctrine of reading down or recasting the statute can, also, be considered to be applied in limited situations for the purpose of saving the statue from being wholly struck down on account of its some provisions i.e. partial unconstitutionality.

10. The doctrine of presumption in favour of Constitutionality and Evolutionary Judicial Creativity, if not activism, has, thus, given birth to three neo-concepts, viz. [1] reading down the statue [ii] some play in the joint and [iii] Constitutionality determination on the totality of the provisions.

11. The grounds for striking down an Act are only two, [i] lack of legislative competence which is not the question or issue before us in this petition and [ii] violation of fundamental rights or other Constitutional or legal provisions. The entire gist of the petition is the Constitutional challenge against the Impugned Act, on the ground of being violative of the Constitutional provisions of Article 14. It is, therefore, necessary for us to examine this aspect with deeper probe, and inner evaluation.

12. The traditional approach has been to focus on whether the impugned action or Impugned Act is ultra vires, substantively or procedurally, and if yes, to provide a remedy against such an impugned action or the Act which is ultra vires and it is the core of the whole process of Judicial Review.

13. Few institutions reveal the attempt of our times, as nearly as Judicial Review of the Constitutionality of legislation. Written Constitutions and the sub-ordination by the Courts of Statutory Law to those Constitutions, represent innovations with deep philosophical roots. From the earliest times, men have sought to create or discover a hierarchy of laws, and to guarantee these hierarchies, indeed this search is one aspect of man's never ending attempt to find something immutable in the continuous change, which is his destiny. Laws change, but the Law must remain, and with its fundamental

values; a view which contravenes the highest law is not at all a law.

14. Another characteristic of modern Constitutionalism, beyond the desire to incorporate immutable ideals into a positive law, shows a similar convergence of natural law and positivism. This trend is specially apparent in the context of Judicial Review. The Constitution expresses, "Positivisation" of higher values; Judicial Review is a method for rendering these values effective and the operative method is instrument of the movement towards harmonisation and of the search of recognisable and acceptable values and cultures. It is linked together and form an integral part of new dimension, dynamics and neo-direction in modern jurisprudence.

15. Judicial Review of the Constitutionality of legislation reveals and represents an exciting and perplexing encounter between legislature and judge, between statute and judgment. However, Judicial Review is but a part of much larger whole, if one defines the Constitutional justice as that can be achieved and in which the citizens may trust their Government to uphold certain rights considered inviolable. It is clear that Judicial Review of enactments is only one way of attaining this goal and a happy State.

16. All actions of the State or its authorities, i.e. bureaucracy, legislation or administrative domains, ought to be carried out, compatible to the Constitutional provisions and also within the defined limits and earmarked parameters prescribed by the Law, Constitutionalism. It is very evident from our Constitution that the power of Judicial Review is, therefore, one of the basic features of the Indian Constitution. Our Constitution has provided an independent mechanism of judicial administration which has been vested with the power of Judicial Review to determine and outside the legality of the executive action and the authority of enactment passed by the legislatures.

17. It must, therefore, be remembered that the judiciary has Constitutional and solemn duty to check and keep the different branch of State Administration within the limits of their powers, conferred upon them by the Constitution.

> Articles 32 and 226 of the Constitution of India confer judiciary with the power of Judicial Review. It is, therefore, clear that judiciary is the guardian and has to uphold the Constitutional values and to enforce the Constitutional limitations. Undoubtedly, the power of Judicial Review is one of the significant part and parcel of our Constitutional Mechanism. Judicial Review in our country relates and embraces and is comprised of three main aspects: (1) Judicial Review of legislative action; (2) Review of Administrative actin; and (3) Judicial Review of judicial verdicts.

EQUALITY DOCTRINE IN ARTICLE 14 AND RELEVANT PROPOSITION OF USA CONSTITUTION:

We have noticed and noted in the initial part of this judgment the grounds of challenge against the Impugned Act raised by the petitioner by invoking the aids of the provisions of Article 14 of the Constitutional of India. Even in course of hearing, the only emphasize is laid on the invalidity and illegality on the grounds of class legislation and being breeding center for encouraging illegality and dishonesty and possibility of abuse of the impugned statute by influential persons. Of course, the respondents have denied all the allegations and averments made in the Public interest litigation.

Indubitably, the Constitution ensures equality before law and equal protection of law. Although this provision mainly, came to be inspired by the 14th Amendment to the Constitution of USA, the Indian Constitution further elaborates by providing that there shall be no discrimination on the ground only of religion, caste, place of birth or any one of them. These provisions were made with a view to avoiding import of doctrine such as, "equal, but separate" into Indian Constitutional law. Although equal protection permits classification of persons, explicit prohibition against discrimination on the ground of religion or caste, etc. ensures that there shall be no classification based on such grounds.

Thanks to famous "Due process clause" of the 5th and 14th Amendments, under the cover of which, the Supreme Court of USA, has struck down, congressional laws unjust, unreasonable and violative of the spirit of the supreme law of the land. Judicial Review as understood in the United States rests upon a very simple foundation that the Constitution is the Supreme Law. It was ordained by the people and is the ultimate source of powers.

Although the doctrine of Judicial Review in USA is accepted and recognized as an integral part of the Constitutional edifice finds no special mention in the Constitutional documents. However, power of Judicial Review came to the fore and lime-light when Chief Justice John Marshall made historic pronouncement in "Marbury V. Madison" in 1803 and Alexander Hamilton's classic arguments in the federalists Papers, and on certain implications drawn from harmonious reading of several scattered clauses in the USA Constitution, then on any explicit assertion conferring special powers, if it ever violated the letter and spirit of the Constitution. What a majesty of Justice and Classic Creativity !

The Supreme Court of India by various judicial pronouncements has, in its outstanding judicial creativity and excellent activism, elucidated, the scope and amplitude of the operations of its power of Judicial Review and has shown the world that the Judiciary is the true protector and assured guarantor of the Constitutional rights and values, and chief guardian of Human Rights and Liberties.

The respondent State has, vociferously, defended the impugned legislative action, inter alia, contending, that the validation and regularization of unauthorised development by the Impugned Act is a permissible and positive classification which is reasonable, just and equitable and providing an opportunity of hearing not only to concerned party but also Public notice is provided for Public objections before regularization the unauthorisd development and constructions. It is, therefore, vehemently, pleaded that regularization of unauthorisd constructions is not actuated by profit motive or oblique or, for raising revenue, but it in the general Public interest and for Public benefit and to avoid undue hardship to the ordinary and larger section of members of the Public and keeping socio-economic larger interest in main focus.

The petitioner has not been able to establish or nothing has been, successfully, spelt out from the record of this Public Interest Litigation which would go to show that the Impugned Act is violative of the provisions of Article 14 of the Constitution. Merely contending that the Impugned Act will tend to proclivity to illegality and corruption, simply and only because unauthorised construction are made regularised by the Impugned Act, is not acceptable and even if such apprehension is assumed to be correct and true, it will not be a legal impediment for invalidation of statute which is otherwise valid and

legal under the frame of Constitution.

(I) HISTORICAL DYNAMICS AND SOCIO-ECONOMIC DIMENSIONS OF IMPUGNED ACT:

It is found from the record that in some areas in the cities Ahmedabad, Vadodara, Rajkot, Surat, Bhavnagar, Jamnagar, have in the last two or three decades grown considerably and a lot of unauthorised development and constructions have taken place. Such unauthorised constructions in some areas have taken place under the Gram Panchayats where development Regulations were not spelt out, due to operation of the Urban Land Ceiling Act, lands could not be transferred to the owners name and hence no building use permission could be legally granted in absence of clear title on the land under the confusion. In many of the areas, only proposed draft development plans were published and hence confusion without finality about rights, titles and the ownership of Lands and Buildings.

It has been shown on behalf of respondent No.1 from the record of the Public interest litigation that there are several other grounds and reasons for unauthorised constructions and impermissible developments have taken place. We would, therefore, like to articulate some of those grounds, hereasunder :-

(II) PATHOLOGICAL PROGNOSIS AND CONSTRAINTS FOR IMPUGNED ACT:

(A) In the cities of Ahmedabad, Vadodara, Rajkot, Surat, Bhavnagar and Jamnagar, there is tremendous growth of population and constant influx of rural people to the urban areas and it has led to growth of illegal constructions.

(B) Unauthorised developments, encroachments and spurt of slums caused strain on the civil services in such metropolitan cities and ultimate strain and hardship to Common People, like pensioners, petty professionals, middle class -and salaried gentry of society.

(C) Municipal limits of these metropolitan cities came to be extended to include several other areas as in Ahmedabad in 1986. In Ahmedabad, the limits of the Municipal Corporation were extended to include the Eastern outskirts further resulting in an increasing and pressing need of residential as well as commercial premises and in

and around the city.

(D) In many areas only proposed draft development plans were published and in majority of the areas town planning schemes could not be finalised leading to confusion and inchoate growth and doubtful titles or regular rights.

(E) Large sections of people have, already, occupied such buildings on a very big scale and most of them belong to the class and category of citizenry mentioned by us in ground No.2(B). Even the Corporations have provided basic services in terms of drinking water and drainage lines in some of these areas and discontinuance of such essential services for the non-implementation of the building regulations did cause and would further cause greater hardship to the Public at large. Not only that, such services and civic amenities have been provided by incurring heavy expenditure. Some of the civic amenities and essential supplies in some areas despite budgetary provisions remained unutilised and the same may cause Public hygiene and health problems.

(F) The main features of the development plan for a city like Ahmedabad is the "Land use zones". The entire city of Ahmedabad is divided into various areas and use is prescribed. Some areas are meant for residential use, whereas, some are for commercial use. Some areas are, also, earmarked for industrial use in the development plans. Thus, the zoning is done ear-marking purpose and user. In the development plan of some of the cities, use zone are exclusive, whereas, in case of some other cities, in a particular zone, certain other uses are, also, allowed in a limited way which are compatible to the main land use. It is, also, found, that in the development plans for the cities of Ahmedabad, Rajkot, Surat and Vadodara, the land use zones were, mainly exclusive and in the residential areas, no commercial activity was allowed. Commoners who have occupied most of them did not know Land Use Zones.

(G) Rapid industrialization and urbanization of the State of Gujarat is, clearly, one of the reasons for the unauthorised construction and haphazard construction in many areas in the cities and

towns. While in many cases the middle-class and less affluent sections of the society are vitally affected and removal of illegal constructions could also result in further hardships for several hundreds of such families.

(H) In the circumstances and special reasons, the State of Gujarat was left with only two options and alternatives:

(i) to demolish the unauthorized construction
or
ii) to regularise them in the larger Public Interest, and for socio-economic considerations and interests within Constitutional limitations with apporopriate safe-guards.

(III) COMPULSIVE JUSTIFICATIONS:

The State of Gujarat has opted for the second alternative and to give one time opportunity to general Public to regularise the illegal constructions on payment of regularisation fees which could be utilised for the development of specific infrastructures. The State Government considered seriously and decided not to go for demolition of thousands of buildings because such a crusade was likely to result in wasteful expenditure of capital investment and create socio-economic problems and greater hardships to the general and common members of the Public.

It is found from the statutory scheme of the Impugned Act that the allegation of profit motive or raising revenue by regularisation of unauthorised construction is incorrect and unacceptable. The amount of prescribed fees for the regularisation of unauthorised construction is statutorily required to be utilised for the development of specific infrastructure which would be helpful and beneficial to the General Public, and societal interest at large. This High Court had, also, appointed a Committee for identifying and fixing responsibility of erring persons and officials who could be attributed for their negligence or connivance in developments of such illegal constructions. Municipal Corporations of Ahmedabad, Surat, Vadodara, Rajkot, Bhavnagar and Jamnagar, as well as, constituted Urban Development Authorities and Area Development Authorities in the State are, also, directed to see that they take steps for fixing the responsibility of official to check and monitor that unauthorised developments do not take

place. Directions are, also, issued to take suitable steps to deal with unauthorised development, as well as, to admonish and take legal steps against erring official who have contributed to the emergence of unauthorised development in the cities, and certain areas in the State of Gujarat.

For framing the regularisation fees, State of Gujarat had deliberations with the Development Authorities, Municipal Commissioners and the Officers of the Corporations, the Chief Town Planning, Officer on Special Duty, and Officers of the Urban Development Department. Rates of fees of maximum and minimum came to be fixed on the basis of analysis and general inquiry regarding possibility of covering optimum number of cases for regularization, as well as, in proportion to the advantages taken by the unauthorised developers for different categories of unauthorised development in different parts of the city area and Development Authority Areas.

PROGNOSIS OF PROGRESSIVE FIXITY OF FEES:

The ceiling of regularisation fees and maximum and minimum rates came to be fixed after consultation with all the concerned authorities including the Chief Town Planner of of Town Planning and Valuation Department and also taking into account the following important aspects and factors.

(a) Existing and proposed development considering the urbanization trend.

(b) Prevailing land values.

(c) Potentiality of development of the area in terms of proposed and existing land use.

CATEGORIZATION AND CLASSIFICATION FOR FEES

The designated authority is empowered to fix fees subject to maximum and minimum specified in the Table of fees mentioned in the Act. Different rates of fees can be determined by the designated authority for different categories of unauthorised development in different areas for different unauthorised uses.

In the light of the provisions made in the Impugned Act, regulation and material emerging from the record, broadly the cases of breach of the Act and building bye-laws can be summarised or classified into following categories:

A. Construction on land reserved by authority without any permission -

(i) constructions having been carried out in Reserved Plots in the Town Planning Scheme or in the Development Plan.

B. Building Violations - Deviation from the permission granted -

(i) Committing breach of Built-up Area limit by constructing beyond maximum permissible limits.

(ii) Committing breach of FSI by constructing beyond the maximum permissible limits.

(iii) Covering the chowk, which is required to be kept open to sky.

(iv) Construction of Pent-House on the terrace.

(v) Construction covering the majority portion of the margin and setbacks to be kept open in a plot and around the building.

(vi) Covering the projections like balcony,

(vii) Construction in consolidated open plot, common plot,

(viii) Change of permitted use of building,

(ix) Construction of building exceeding permissible height.

C. Parking and Sanitary facility violations -

(i) Constructions having been made in the hollow plinth, sanctioned for parking,

(ii) Conversion of use in the cellar for purposes other than parking,

(iii) Sanitary facility as per bye-laws are not provided.

D. Fire Safety/Structural Safety violations -

(i) Multi-storeyed buildings constructed without or with inadequate provision of fire safety as prescribed in respective Rules.

(ii) Building construction not following structural safety norms.

CONTRIBUTORY ANCILLARY MATERIAL ATTRIBUTES FOR IMPUGNED ACT:

In view of the special facts and peculiar circumstances which led to unauthorised constructions and illegal developments in the State of Gujarat before the Impugned Act came to be passed for the purpose of regularization of the unauthorised constructions, respondent No.1 State was studying the policy of regularisation accepted and followed by the States of Andhra Pradesh and Tamil Nadu. The Study Report was, also, got prepared by the State Government appointing experienced and expert officials. Before passing the Impugned Act, the entire issues and problems received consideration and discussions in several high level meetings including Cabinet meetings. There were deliberations in respect of all aspects and one of them being that it may lead to promoting illegalities and may also create an impression that the State has become helpless in removing such illegalities.

However, State of Gujarat having considered the complex aspects of the urban growth in the metropolitan cities and considering the Study Report, deliberations, debate and dialogue and general view of the Public, the Government thought it fit and expedient by holding a bonafide opinion in evolving strategic policy and finding that it was necessary to regularise unauthorised construction. It, also, considered the security and safety of the people and the buildings and larger societal interest from socio-economic perception and imperatives, as well as, Law and order perception in the event of mass and huge demolitions.

It must be remembered that the State Government is obliged to consider the socio-economic aspects and factors and the socio-economic fabric of the society cannot be permitted to be disturbed by leading to a chaotic or destructive situation in a civilized and organised society. It was, also, considered by the State Government that in the event of demolition of thousands of buildings, the Local Authorities and Civic bodies had no sufficient man-power, material and machineries for total demolitions of unauthorised constructions and

developments of thousands of houses and rendering many homeless. The State Government, therefore, decided to pass the Impugned Act in the larger interest of Public and to protect and safeguard the interest of various sections of people and mainly common persons, fixing regularisation fees on an accepted norms and rational and also basing it on the theory of compound charges and penalties on the buildings constructed unauthorisedly and in violation of Rules and regulations.

Since the Gujarat Legislative Assembly was not in session at that time, Gujarat Regularisation of Unauthorised Development Ordinance, 2000 (No.6 of 2000) was promulgated on 22nd November 2000, to regularise the unauthorised development in the urban areas of the State. Thereafter, the Gujarat Legislative Assembly was summoned on 19th March, 2001 and prorogued on 29th March, 2001. Since time of the Assembly was very short, the said Ordinance could not be replaced by an Act of the State Legislature in that Session. In such an situation, by virtue sub-clause (a) of clasue(2)of Article 213 of the Constitution, the said Ordinance would have ceased to operate after 29th April 2001, the day on which the period of six weeks from the date of re-assembly of the Gujarat Legislative Assembly expired.

It was, therefore, in such factual background, State thought it expedient to take immediate action to continue the operation of the provisions of the said Ordinance, the Second Ordinance, 2001 (No.3 of 2001) came to be promulgated, on 28th April 2001. The Gujarat Legislative Assembly then met from 26.7.2001 to 31.8.2001. In this Session, the Ordinance was presented as Bill No.17 of 2001. This Bill was discussed at length and passed by the Legislative Assembly, on 31.8.2001, and published in the extra ordinary Gazette on 1.9.2001 as Gujarat Act No.23 of 2001. Subsequently, appropriate and necessary amendments in the said Act came to be made in the light of the unprecedented tremors terror which struck Gujarat on 26.1.2001 with devastating effect and impact including huge loss of life, material and buildings. The Impugned Act is within the competence of the State as the subject to regulate Buildings and developments of lands is a subject of State List and jurisdiction.

The Impugned Act is designed to regularise the unauthorised developments in urban development areas or development area in the State. The aims and objects of the Impugned Act, undoubtedly and clearly, charted out what necessitated the Enactment of the Impugned Act, to regularise the unauthorised constructions. On account of

rapid growth of economic opportunities in and around the major cities of Gujarat, there had been constant influx of rural population to the urban areas of the city resulting in steep increase in demand for properties for residential, commercial and other uses. This has, also, resulted in feverish and unauthorised constructions, and some of them do not conform to the existing building regulations. Consequently, in the urban areas of the State, there has come up large number of buildings which have been constructed without permission or where permission was granted, constructed in contravention of the development and control regulations and permission for development.

The owners and occupants of such buildings had been given and served with notices under the Bombay Provincial Municipal Corporation Act, 1949, or as the case may be, under the Gujarat Town Planning and Urban Development Act, 1976, requiring them to remove or pull down or alter the buildings. However, owners and occupants had failed to comply with the requisition of the notice and even then administratively, removal or pulling down of large number of building was neither feasible nor desirable.

Removal or pulling down or alteration of such buildings on a large scale was fraught with danger of creating law and order problem and hardship to the people, as a large number of people would be rendered homeless and socio-economic fabric of the society would be disturbed leading to chaotic and unruly situation in the society. In order to avoid such a situation, intervention of the Government by legislation for regularization had become a compelling necessity. Faced with similar situation, some other State Governments in the country had, also, come out with suitable legislation for regularisation. It is in this background, respondent No.1, State Government, decided to regularise unauthorised construction of the buildings and developments.

Therefore, the main design and desideratum of the Impugned Act is to regularise unauthorised development in urban development and development area in the State of Gujarat in the light and back-drop of special unavoidable facts and peculiar compelling circumstantial realities and historical facts and prevalent situations.

After having taken into consideration and giving our serious thoughts to the legislative scheme and frame of the Impugned Act, in the backdrop of the factual prevalent situation at the relevant time and the compelling necessity, the State of Gujarat, came out with

and enacted the Impugned Act, giving up the first alternative of demolition of thousands of buildings and thereby rendering lacs of people homeless and resultant law order situation, and accepting second option in larger Public interest and Public good policy.

MATERIAL STATUTORY SAFEGUARDS AND JUSTIFYING CHECKS AND BALANCES:

Under the Impugned Act, the designated Authority is empowered to regularise any unauthorised development, only in respect of matters, viz.

(a) Margin and set-backs,
(b) Floor Space Index,
(c) Covered projection,
(d) Change of use,
(e) Common plot and consolidated open plot, and
(f) Height of building.

The unauthorised development can be regularised only if it is consistent with any general law for the time being in force relating to control or regulation or development and also subject to the provisions of fire safety measures and structural stability under the relevant law.

Section 4 also, clearly, provides that an unauthorised development shall not be regularised under sub-section ((2) of section 3 of the Impugned Act, in the case, where, unauthorised development is carried out on any of the land belonging to the Government, Local Authority or statutory authority or land in respect of which dispute exists in relation to its title and tenure or land allotted by the Government or such authorities for the specific purpose, land underalignment of roads indicated in development plan or a town planning scheme or under alignment of a Public road or an internal road, of approval lay out, land designated or reserved under a development plan or a town planning scheme, water courses and water bodies like tank beds, river beds, natural drainage and such other places, areas earmarked for the purpose of obnoxious and hazardous industrial development will not form part of unauthorised development which can be regularised under the Impugned Act.

The procedure for regularisation of unauthorised development by designated authority is prescribed. This provision is exhaustive. Notice is also prescribed under section 3 of the Impugned Act. Appellate forum presided by a Judicial Officer who has held the office of the District Judge for a period of not less than three years

has been provided in section 5 of the Act. Any person aggrieved by the notice under sub-section (2) of section 3 is entitled to prefer an appeal to the Appellate Officer. The process and procedure is also prescribed to entertain the appeal by the Appellate Officer. Again, it will be very interesting to note that the fees received under the Impugned Act, known as "impact fees" for regularisation of the unauthorised construction shall form part of a fund called "Infrastructure Development Fund" which shall be held by the Designated Authority in Trust for the purpose of augmentation, improvement or creating of an infrastructure facilities only.

The contentions, therefore, that unchannalised and unfettered discretionary and delegated powers are given to the authorities and which will lead to corruption and illegal activities cannot be accepted. Of course, corruption is Enemy No.1 from within in our Country which is also rampant - as reported - pertains to implementation and not competence of enacting the Law and therefore, also, not a valid ground to invalidate the statute.

In view of the peculiar facts and circumstances and the extra-ordinary and emergent, Socio-economic and factual realities, respondent No.1, State was left with only two alternatives and options, viz. (i) to demolish thousands of unauthorised construction or unauthorised developments which went on since more than last one-and-half decades prior to introduction of the Impugned Act and the lands and buildings in respect of which various hands went on changing thereafter giving rise to and causing or allowing socio-economic as well as law and order problems, and to face them, or (ii) to regularise the unauthorised development and impermissible constructions in respect of limited areas and limited parts of buildings with permissible, suitable and appropriate safeguards and, that too, on recovery of appropriate evolutionary and progressive fees, popularly known as "Impact Fee", for the regularisation.

Respondent No.1 State opted for the second alternative. The petitioner has not been able to show in this Public interest litigation or nothing has been successfully spelt out that the Impugned Act is in any way "ultra vires" the Constitution or other provisions of the law. The Legislative Competence of the State of Gujarat, in enacting the Impugned Act, is not questioned and rightly so. Not only that the challenge against the Impugned Act being ultra vires the Constitution of India is not at all established or successfully spelt out from the record of

the Public interest litigation and, obviously, therefore, challenge against Impugned Act must fail.

On the contrary, from the voluminous record, from report of the expert Study Group, the historical and socio-economic factual profile and the hard realities of time and by providing sufficient safeguards and appropriate measures against the misuse and abuse of discretionary and delegated powers, it cannot be said that it has created an impression that the Impugned Act is passed with profit motive or for collection of revenue giving rise to corruption. It has been successfully shown and spelt out from the record that the Impugned Act is neither ultra vires the Constitution nor illegal or invalid, but is shown to be a piece of Legislation accepting hard realism in exercise of the Constitutional Legislative Jurisdiction to enact the law to regularise the buildings as a "One Time Measure" in the larger interest of Public and for Public good and policy in the interest of helping thousands of victims mainly belonging to common-class and innocent parties, as long before, real wrong-doers, like, builders, contractors, developers and organizers of such developments are out of focus, taking lions share and real cream and for the safety and security of buildings affected on account of unprecedented earthquake and tremors' terror afflicted in many parts of Gujarat, on 26th January 2001. The grounds of challenge against the impugned Action on the premise of violative of Article 14 and inconsistent with the provisions of the Laws, therefore, cannot be acceded to and must fall on the ground.

After having taken close look and intimate analysis and serious evaluation of the aims and objects with which the Impugned Act has been brought into operation and the provisions made thereunder, with necessary safeguards, the Constitutional legislative exercise, by the State in enacting the Impugned Act cannot be said to be violative of the provisions of Article 14 of the Constitution of India or any other law.

The doctrine of equality before law and equal protection of law as enshrined in Article 14, positive separate treatment or reasonable classification is permissible. Article 14 cannot be read to say that every law must have universal application for all, who are not by nature, attainment of circumstances in the same position as verifying needs of different classes, a person often requires separate treatment. Equal protection may be denied by procedural law, as well as, by substantial law, in exercise of power of classifying persons for

legitimate purposes.

Obviously, every classification is, in some degree likely to cause some inequality and that, "ipso-facto", is not enough to void a Legislative permissible exercise. If a legislation deals equally with members of a well-defined class, it is not prohibited or obnoxious and it is not open to the charge of denial of equal protection or breach of equality on the ground that it has no application to other persons. Therefore, the contention that the benefit of Impugned Act will be available to certain cases and class of people who have raised unauthorised construction before cut-off date i.e. 22nd November 2000, and therefore is violative of the principles of provisions of Article 14, is without any merits and substance and evidently must meet with only legal fate of rejection.

What Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. The proposition of law on this score is very well established since 1952 on the anvil of Judicial Review and lucidly emanated in Budhan v. State of Bihar, 1955(1) SCR 1045. Till date, if the legislative body takes care to reasonably classify persons for legislative purpose and if it deals equally with all persons belonging to "a well-defined class", it is not open to challenge in the guise of denial of equality or equal protection of law contending that the law does not apply to persons after the cut off date. Of course, it is true to pas the test of permissible classification following two conditions must be established :-

(i) That the classification must be founded on intelligible differentia which distinguishes persons or things that are grown together from others left out of the group; and

(ii) That the differentia must have a rational relation or direct nexus to the purpose and objects sought to be attained by the impugned statute.

Thus, what is required is, that there ought to be nexus between the basis for classification and the design and desideratum of the Impugned Act sought to be achieved as held in Kedarnath v. State of West Bengal, 1954 SCR 30. It is, also, not necessary that there ought to be scientifically perfect or logically complete nexus like precision of clock or principles of geometry.

In the event of challenge against the legislative action of a legislature on the basis of equality and equal protection, the question for determination is not whether it has resulted in inequality, but whether there is some difference which bears just and reasonable relation to the purpose and object of the legislation. Needless to reiterate that mere differentia or inequality treatment, ipso facto, does not amount to discrimination within inhibition of equal protection doctrine as provided in Article 14 of the Constitution of India. Reasonableness is to be adjudicated with reference to the purpose and object of the legislation and not on spasmodic sentiments or moral feelings or fanciful perceptions.

The basis of classification which can be held to be permissible is not possible to exclusively articulate or no specific criteria could afford reasonable basis for classification in all cases. Obviously, it depends on the purpose and design of the legislation in view and whatever has a reasonable relation to think of the legislation of reasonable basis for classification of the objects coming under the purview of the enactment.

Therefore, the basis of classification has to be taken into consideration, it may be geographical, historical, difference in times, socio-economic considerations, law and order situation, so on and so forth. The anxiety of the Court should be, whether the impugned classification in the Act or the legislative exercise has led to any violation of the provisions of the Constitution or whether, such legislation can be condemned as arbitrary, improper or irrational. Whether a law of general application can be challenged as discriminatory as it has been vehemently submitted in this Public interest petition, merely because the object of its enactment was to benefit a particular class of individuals in the light of cut-off date. Nothing has been, successfully, shown or spelt out from the record that the Legislative classification in the Impugned Act is in any way suffering from the vice of arbitrariness, unfairness, discrimination or irrationality, substantively or procedurally.

Article 13 provides that no law shall be inconsistent with or in derogation of fundamental rights. Article 13(1) deals with pre-Constitution laws and provides that laws in force before the commencement of the Constitution in so far as, they are inconsistent with the provisions of the fundamental rights shall to that extent of such inconsistency be void. Whereas, Article 13(2) provides that the State shall not make any law which takes away or

abridges the fundamental rights and any law made in contravention shall to the extent of contravention be void. It is, therefore, very clear that the provisions of the Impugned Act are required to be examined in the light of the provisions of Part III of the Constitution of India providing for fundamental rights.

Apart from the presumption in favour of the constitutionality of the impugned enactment, we have found on facts and in law that the provisions made in the Impugned Act, in our opinion, do not violate any fundamental right or no provision is inconsistent with the provisions contained in Part III dealing with fundamental rights. Therefore, there is no contravention of the provisions of Article 13(2) of the Constitution. Now, it will lead us to the consideration of the provisions of Article 245(1) of the Constitution of India.

Article 245 is provided in Chapter XI dealing with Legislative Relations and distribution of Legislative Powers between Union and States. The competence of the respondent No.1 State in legislating the Impugned Act is not under challenge. Likewise, there is also no challenge against the Impugned Act or any one of the provisions of the Impugned Act having extra-territorial operation. Therefore, strictly speaking, this Article also, cannot be pressed into service. On the contrary, clause (i) of Article 245 provides that the Legislature of State may make laws for the whole or any part of the State. So it provides Constitutional power to the State Legislature to make laws for the whole or any part of the State subject to the provisions of the Constitution.

Any legislation or enactment made under Article 245(1) is subject to Judicial Review and has to be consistent with the Constitution of India. It should not suffer from the vice of illegality, impropriety or irrationality. It should, also, be compatible to the jurisdictional law which is contained in the Constitution. Jurisdictional facts may be of two kinds, viz. (i) legislative facts and (ii) adjudicative facts.

The terms "legislative-facts" and "adjudicative facts" came to be used by Prof. K.C.Davis in his book on Administrative Law Treatise and Authority on American Administrative Law, whereas, Dr.H.W.R.Wad has pointed out distinction in this somewhat formidable terms, proves on inspection to be close relative of old friends or old enemy, the distinction between the question of policy and question which must be determined objectively.

Therefore, when the Legislature decides to enact a law, it has an object and policy in contemplation which is to be carried out by the Legislature. The evolution of the policy is based on many factors, such as, socio-economic conditions. It is very well, now, known that the administration, no less than the Legislature has been empowered to Act in its discretion in the matter of policy. Justiciability of such an aspect is very much circumscribed. It is, only, the existence of the facts on which the policy is based, that is to be established. If the action based on such policy is challenged, the sufficiency of those facts to support the policy has to be shown.

Judicial Review would succeed, only, on finding that such facts do not exist, at all, for the policy challenged is made. The approach in judging the Constitutionality of the Legislation, therefore, should be that the legislative policy is entitled to respect unless it is in conflict with the Constitution. If it is not contrary to the Constitution on the face of it, the person who challenges the Constitutionality of the enactment must, successfully, show it to the Court. In the present case, not only that the petitioner has not been able to show that the provisions contained in the Impugned Act suffer from the vice of ultra vires, but it is spelt out from the record that the Impugned Act is justified to be not suffering from any vice of law or not compatible with the provisions of the Constitution.

The Constitutionality of the statute has to be determined on the totality of its provisions. A law has to be judged on the Constitutionality of the generality of its provisions is a celebrated principle and not by freaks and exceptions as held by the Hon'ble Apex Court in "R.S.Joshi v. Ajit Mills Limited (1977) 40 STC 497". Imperfection does not expose an Act or provision to invalidity, especially, that relating to socio-economic or affecting law and order situation. It must be remembered that legislation is directed at practical problems, socio-economic mechanism is, highly, sensitive and complex, many problems are singular and contingent, laws are not abstract proposition and do not relate to obstruct and are not to be measured by abstract symmetry, several legislations, particularly in socio-economic matters are essential and based on experiments or experience or what one made on trial and error method and that it cannot provide for all possible situations and anticipate all possible abuses or misuses.

The contention so, vehemently, propounded before us that

the provisions of the Impugned Act are, likely, to be abused and misused. Firstly, this is not a ground as such, even if it is believed to be correct so as to expose the provisions to the unconstitutionally or ultra vires. There may be, always, some possibility of misuse or abuse of the provisions. On that count itself, the Impugned Act Act cannot be struck down as invalid or unconstitutional. It cannot, also, be a ground to invalidate the legislation because it is not possible for any Legislature to anticipate some distortion and abuses of its legislation and to provide for such anticipated or hypothetical distortions and abuses. It is, therefore, difficult to conceive a legislation which is not capable of being abused by perverted human ingenuity. It is in this context, it has been evolved that the Court must adjudge the Constitutionality of such legislation by generality of its provisions and not by its crudities and inequities or by the possibilities of abuse of any of its provisions. No doubt, if any such inequities or possibilities of abuse or crudities come to the notice or to the light, it is always open for the Legislature to step in and enact amendatory legislation. That is the essence of pragmatic approach which guides and inspires the Legislature in dealing with the complex socio-economic problems and elements of realism of human life.

We are, therefore, of the opinion that the contentions advanced against the Impugned Act, that it is, likely, to be misused and/or abused by the parties or by the officials cannot be accepted to invalidate the Impugned Act. Equally true is in respect of the allegation and the plea that the delegated powers by empowering the designated authority may again create problems of law and otherwise and, also, give rise to corruption is unacceptable, in so far as the Constitutionality of the Impugned Act is concerned. The regulations made under the Act cannot be said to be inconsistent with the powers given to the designated authority and the same cannot be said to be unregulated or unfettered. The statutory scheme and procedure has been prescribed, as to how, the designated authority shall exercise its power. Again, it is subject to appeal by the appellate forum to be presided by an experienced Judicial Officer not below the rank of District Judge. The entire legislative frame and scheme of the statutory provisions in the Impugned Act cannot be said to be in any way hit by the doctrine of ultra vires or are in any way incompatible or inconsistent with the provisions of the Constitution of India or any law.

In Consumer Action Group v. State of Tamil Nadu, AIR 2000 SC 3060, on the similar grounds and somewhat similar provisions contained in Tamil Nadu Town and Country Planning Act, whereby, illegal constructions were permitted by empowering the Government to regularise charging regularization fees and on being questioned and contention that it violates the provisions of Article 14 or 21 of the Constitution of India, the Apex Court rejected the challenge and upheld the Constitutionality of the provisions empowering the Government to regularise by charging regularization fees holding that the same does not violate the provisions of Article 14. Interesting observations and findings are beautifully expounded in "paras 32 to 38" of the judgment. The said decision reinforces our view in this petition. All the pleas and allegations against the Impugned Act are sans-substance.

In so far as, the contention that discrimination and differentiation qua the Impugned Act is concerned, we find no substance. The allegation of excessive delegation of powers is, also, totally, meritless. The Impugned Act is not "ultra vires" the Constitution. It is not vulnerable and impeachable. It is held to be intra vires. Our view is also fortified by the decision of the Consumer Action Group (supra) as well as following latest decisions and relevant judicial pronouncements.

THE PROPOSITIONS AND PRINCIPLES ENUNCIATED IN THE CASE LAW BY THE HON'BLE APEX COURT

In Public Services Tribunal Bar Association v. State of U.P.,2003 AIR SCW 653, it has been, clearly, held that the burden of proof is upon the propounder of the plea of ultra vires or who challenges it. Judicial system has an important role to play in our body polity and has a solemn obligation to fulfil. In such circumstances, it is imperative upon the Courts while examining the scope of legislative action to be conscious to start with the presumption regarding the Constitutional validity of the legislation. Placing reliance on a decision rendered in State of Bihar & ors. v. Bihar Distillery Ltd, (1997) 2 SCC 453, following important observations have been made:-

> "The approach of the Court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is

> not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed any such defects of drafting should be ironed out as part of the attempt to sustain the valildity/constitutionality of the enactment. After all, an Act made by the Legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application."

It may be mentioned that in Ashutosh Gupta v. State of Rajasthan, AIR 2002 SC 1533, the proposition that every statutory provision is presumed to be Constitutional is evidently and clearly propounded. It is, also, held that the allegations in the writ petition on the basis of inequality and violation of Article 14 must be specific, clear and unambiguous and the burden is on the petitioner to establish. The classification having direct nexus with the object sought to be achieved is permissible and what is not permissible is a class legislation.

All that Article 14 guarantees, is similarity of treatment contra-distinguished from identical treatment. Equality before law means among equals the law should be equal and should be equally administered and that the like should be treated alike. Equality before the law does not mean that things which are different shall be treated as though, they are the same. It, of course, means, denial of any special privilege by reason of birth, creed or the like. The Legislature, as well as, the executive government while dealing with diverse problems arising out of an infinite variety of human relations must of necessity, have the power of making special laws, to attain any particular object and to achieve that object, it must have the power of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not per-se amount to discrimination, as alleged, in this petition. This proposition is, also, very much reinforced by the decision of the Hon'ble Apex Court in State of Karnataka v. B. Suvarna Malini, AIR 2001 SC 606.

It cannot be said even for a moment that where Legislature validates an executive action repugnant to

the statutory provisions declared by a Court of law, is always vulnerable. What the Legislature is required to do is to first remove the very basis of invalidity and then validate the executive action. In order to validate an executive action or any provision of a statute, it is not sufficient for the Legislature to declare that the judicial pronouncement given by the Court of law would not be binding, unless the very basis upon which it is given is so altered or the mischief or its vice is removed that the said decision would not have been given in the changed circumstances. In our opinion, the contention that by enacting the Impugned Act, the Legislature has exercised its jurisdiction to review the judicial action is not at all justified. In fact, upon the anvil of judicial review, the exercise of Legislative competence and power in enacting the Impugned Act, it is successfully noticed that the Impugned Act is not at all ultra vires the Constitution. It does not suffer from any illegality or any impropriety. The proposition on this point is, also, very well expounded in Bhaktavar Trust v. M.D. Narayan, AIR 2003 SC 2236.

PROROGUE

After having taken into consideration the submissions raised before us, questions canvassed and catalogue of factual and legal profile, design and desideratum of the provisions of the Impugned Act, intent, purpose of the Government in enacting the Impugned Act, historical background, socio-economic dimensions, empirical study of the problems for the purpose of making selection out of two alternatives by the Government, aims and objects of the Impugned Act and permissible classification, we are of the clear opinion that the challenge against the Impugned Act on the premise that it being ultra vires is meritless and without any substance. The Impugned Act is held to be intra vires. The petition is therefore, required to be dismissed. The petition, therefore, shall stand dismissed leaving the parties to bear their own costs. Rule is discharged.

In view of the above, the Civil Applications do not assume any survival value and accordingly they are disposed of.

(Bhawani Singh)
Chief Justice

(J.N.Bhatt)
(vjn) Judge